

**Department of State Health Services  
Agenda Item for State Health Services Council  
October 10-11, 2007**

**Agenda Item Title:** Proposed repeal of 25 TAC §§412.951 – 412.960, concerning Jail Diversion Pilot Program

**Agenda Number:** 4-f

**Recommended Council Action:**

☐ For Discussion Only

☒ For Discussion and Action by the Council

**Background:**

The department was required to develop and implement the Jail Diversion Pilot Program established under Texas Health and Safety Code, §§533.101-533.107. The department adopted rules to establish procedures for the use of interactive audiovisual telecommunication in conducting mental health evaluations to determine if a person is clinically eligible for diversion to mental health services. Although this pilot program has ended, various jail diversion measures and strategies continue to be implemented by the local mental health authorities throughout the state.

**Summary:**

The repeals are proposed because the statutory sections mandating the pilot program (Health and Safety Code §§533.101 – 533.107) expired effective September 1, 2005. Rules for the Jail Diversion Pilot Program are thus no longer necessary and their repeal will have no fiscal impact.

**Summary of Stakeholder Input to Date (including advisory committees):**

The Texas Council for Community MHMR Centers and the Mental Health Planning and Advisory Council (MHPAC) were invited by email to provide informal input regarding the proposed repeals. The Texas Council responded that they had no concern regarding the proposed repeals, and no input was received from the MHPAC.

**Proposed Motion:** Motion to recommend HHSC approval for publication of rules contained in agenda item # 4-f.

**Agenda Item Approved by:** Joe Vesowate

**Presented by:** Mike Maples **Title:** Director, Program Services Section

**Program/Division:** MHSA **Contact Name/Phone:** Janet Fletcher, 512/419-2673

**Date Submitted**  
July 16, 2007

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 412. Local Mental Authority Responsibilities  
Subchapter Z. Jail Diversion Pilot Program  
Repeal §§412.951 – 412.960

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§412.951 – 412.960, concerning the jail diversion pilot program.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). After reviewing §§412.951 - 412.960, relating to the jail diversion pilot program, the department has determined that the reasons for adopting these sections no longer exist. The authorizing statute, Health and Safety Code, §§533.101 – 533.107, expired effective September 1, 2005. Jail diversion measures and strategies are implemented by the local mental health authorities (LMHA) throughout the state, as required by §533.0345(b) and the LMHA performance contracts.

SECTION-BY-SECTION-SUMMARY

Sections 412.951 – 412.960 are being repealed in their entirety. The statutory sections mandating the jail diversion pilot program have expired, and the rules implementing the program are unnecessary.

FISCAL NOTE

Machelle Pharr, the department's Chief Financial Officer, has determined that for each year of the first five-year period that the repeal of the sections will be in effect, there will be no fiscal implications to state or local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Wilson Day, Director of the department's Budget Section, has also determined that there will be no effect on small businesses or micro-businesses to comply with the sections as proposed. This was determined by interpretation of the rules that these entities will not be required to alter their business practices as a result of the repeals. There are no anticipated economic costs to persons as a result of the repeals, and there is no anticipated negative impact on local employment.

## PUBLIC BENEFIT

Joe Vesowate, the department's Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five years the repeal of the sections is in effect, the public will benefit. The public benefit anticipated as a result of repealing the sections is that the department will maintain a clear, concise set of relevant rules and eliminate the potential for confusion.

## REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed repeals are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

The department has determined that the repeals would not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of Government action, and therefore, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposed repeal may be submitted in writing to Janet Fletcher, Department of State Health Service, Mail Code 2082, 909 West 45th Street, Austin, Texas 78751, or by e-mail to [janet.fletcher@dshs.state.tx.us](mailto:janet.fletcher@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Government Code, Chapter 531, and Health and Safety Code, Chapters 1001 and 533. Review of the sections implements Government Code, §2001.039.

#### Sections for Repeal

- §412.951. Purpose.
- §412.952. Application.
- §412.953. Definitions.
- §412.954. Mental Health Evaluation.
- §412.955. Eligibility for Jail Diversion.
- §412.956. Obtaining Informed Consent for the Evaluation.
- §412.957. Recommendations and Documentation.
- §412.958. Audiovisual Telecommunication Equipment.
- §412.959. References.
- §412.960. Distribution.

~~§412.951. Purpose. The purpose of this subchapter is to provide procedures for the use of interactive audiovisual telecommunication in conducting the mental health evaluation in the pilot program established under Texas Health and Safety Code, §§533.101-533.102, to determine if a person is clinically eligible for diversion from jail to mental health services prior to the person being charged with a crime or being detained in jail.~~

~~§412.952. Application. This subchapter applies to local mental health authorities (LMHAs) participating in the jail diversion pilot program established under the Texas Health and Safety Code, Chapter 533, §§533.101-533.102.~~

~~§412.953. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:~~

~~\_\_\_\_\_ (1) Booking activities associated with the filing of charges against a person by a law enforcement officer.~~

~~\_\_\_\_\_ (2) Evaluator A qualified mental health professional (QMHP) working under the auspices of the local mental health authority who possesses competencies identified by the local authority as required for this pilot and who is an individual credentialed to provide QMHP-CS services, including those referenced in §412.314(a) (b) and §412.315(a) of this title (relating to Crisis Services and to Assessment and Treatment Planning, respectively), who has demonstrated competency in the work to be performed, and who:~~

~~\_\_\_\_\_ (A) has a bachelor's degree from an accredited college or university with a minimum number of hours equivalent to a major as determined by the LMHA in accordance with §412.312(c) of this title (relating to Competency and Credentialing) from an accredited college or university in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention; or~~

~~\_\_\_\_\_ (B) is a registered nurse.~~

~~\_\_\_\_\_ (3) Interactive audiovisual telecommunication The use of interactive audiovisual equipment, involving both the hearing and sight of the evaluator and of the person being evaluated, to conduct a mental health evaluation.~~

~~\_\_\_\_\_ (4) Law enforcement officer A representative of a municipal, county, or state law enforcement agency who is certified by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).~~

~~\_\_\_\_\_ (5) Local mental health authority (LMHA) An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and/or for supervising and ensuring the provision of mental health community services to people with mental illness in one or more local service areas.~~

~~\_\_\_\_\_ (6) Mental illness An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder or dependency, mental retardation, autism, or pervasive developmental disorder) that:~~

~~\_\_\_\_\_ (A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or~~

~~\_\_\_\_\_ (B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.~~

~~\_\_\_\_\_ (7) Mental health evaluation The clinical process of obtaining and evaluating relevant historical, social, functional, psychiatric, developmental, or other information from a person sufficient to determine priority population eligibility, treatment needs, the intensity of those needs, and the nature of the person's current support system.~~

~~\_\_\_\_\_ (8) Person An individual who has been detained by a law enforcement officer.~~

#### ~~§412.954. Mental Health Evaluation.~~

~~\_\_\_\_\_ (a) An evaluator conducts a mental health evaluation of a person using interactive audiovisual telecommunication in accordance with §412.315(a)(1) (9) of this title (relating to Assessment and Treatment Planning) if:~~

~~\_\_\_\_\_ (1) the person is referred by a law enforcement officer;~~

~~\_\_\_\_\_ (2) there has been no booking of the person; and~~

~~\_\_\_\_\_ (3) the evaluator determines that the person is not under the influence of drugs or alcohol; or~~

~~\_\_\_\_\_ (4) the evaluator determines that the person is under the influence of drugs or alcohol, but that the person is not grossly impaired by them.~~

~~\_\_\_\_\_ (b) If the evaluator determines that an accurate mental health evaluation of a person referred for a mental health evaluation by a law enforcement officer is not possible because the person is under the influence of drugs or alcohol and is grossly impaired by them, the evaluator will:~~

~~\_\_\_\_\_ (1) notify the law enforcement officer that the mental health evaluation will not be conducted at that time; and~~

~~\_\_\_\_\_ (2) reschedule the mental health evaluation at a later time.~~

~~\_\_\_\_\_ (c) The mental health evaluation is conducted privately with the person alone in a room unless consent is given by the person for others to be present.~~

~~\_\_\_\_\_ (d) The mental health evaluation must be conducted in a room that allows for visual observation from outside the room.~~

#### ~~§412.955. Eligibility for Jail Diversion.~~

~~\_\_\_\_\_ (a) The evaluator determines if the person is eligible for jail diversion based on the results of the mental health evaluation.~~

~~\_\_\_\_\_ (b) The person shall be eligible for jail diversion if:~~

~~\_\_\_\_\_ (1) the person is a member of the TDMHMR priority population;~~

~~\_\_\_\_\_ (2) the person is not being considered for felony charges involving violence;~~

~~\_\_\_\_\_ (3) the person is not grossly impaired by alcohol or substance abuse; and~~

~~\_\_\_\_\_ (4) the person agrees to be diverted.~~

~~\_\_\_\_\_ (c) If the person is eligible for jail diversion, the LMHA may recommend jail diversion if the local mental health authority determines that capacity exists to meet the needs of the person to be diverted based on an initial treatment plan to address the person's identified needs.~~

#### ~~§412.956. Obtaining Informed Consent for the Evaluation.~~

~~\_\_\_\_\_ (a) The evaluator requests and documents the person's informed consent, or withholding of informed consent, to participate in a mental health evaluation using interactive audiovisual telecommunication.~~

~~\_\_\_\_\_ (b) The evaluator informs the person that the mental health evaluation, at the discretion of the law enforcement officer, may be conducted in person rather than through the use of interactive audiovisual telecommunication.~~

~~\_\_\_\_\_ (c) The evaluator will not videotape or audiotape the person during the mental health evaluation for any purpose.~~

#### ~~§412.957. Recommendations and Documentation.~~

~~\_\_\_\_\_ (a) The evaluator makes a verbal and written report to the referring law enforcement officer concerning:~~

~~\_\_\_\_\_ (1) the person's eligibility or ineligibility for jail diversion;~~

~~\_\_\_\_\_ (2) the LMHA's capacity or lack of capacity to treat a person who is eligible for jail diversion;~~

~~\_\_\_\_\_ (3) the person's informed consent or lack of informed consent to receive LMHA treatment services; and~~

~~\_\_\_\_\_ (4) the evaluator's treatment recommendations.~~

~~\_\_\_\_\_ (b) The LMHA maintains documentation of each mental health evaluation conducted through interactive audiovisual telecommunication.~~

~~§412.958. Audiovisual Telecommunication Equipment. The local mental health authority shall ensure that the standard of performance and security of the audiovisual telecommunication equipment used to conduct the mental health evaluation is consistent with the most current version of the Telemedicine Medical Standards set by the Telecommunications Infrastructure Fund Board (TIFB).~~

~~§412.959. References. The following laws and rules are referenced in this subchapter:~~

~~\_\_\_\_\_ (1) Texas Health and Safety Code, Chapter 533; and~~

~~\_\_\_\_\_ (2) Chapter 412, Subchapter G, of this title, governing Mental Health Community Services Standards.~~

#### ~~§412.960. Distribution~~

~~\_\_\_\_\_ (a) This subchapter is distributed to:~~

~~\_\_\_\_\_ (1) all members of the Texas Board of Mental Health and Mental Retardation;~~

~~\_\_\_\_\_ (2) executive, management, and program staff of TDMHMR Central Office;~~

~~\_\_\_\_\_ (3) executive directors of all local authorities; and~~

~~\_\_\_\_\_ (4) advocacy organizations.~~

~~\_\_\_\_\_ (b) The executive director of each LMHA participating in the pilot program is responsible for disseminating copies of this subchapter to all appropriate staff and contractors.~~